In the Supreme Court of the United States

OCTOBER TERM, 1966

No. 715

FLORIDA EAST COAST RAILWAY COMPANY, APPELLANT

v.

UNITED STATES OF AMERICA AND
INTERSTATE COMMERCE COMMISSION

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE MIDDLE DISTRICT OF FLORIDA

MOTION TO AFFIRM

Pursuant to Rule 16(1)(c) of the Rules of this Court, the United States of America and the Interstate Commerce Commission move that the judgment of the district court be affirmed.

STATEMENT

This is a direct appeal from the final judgment of a three-judge district court (256 F. Supp. 986) dismissing an action brought to set aside an order of the

Interstate Commerce Commission (J.S. App. C). The order authorized the Seaboard Air Line Railroad Company (Seaboard) to use a portion of trackage of the Florida East Coast Railway Company (East Coast) so that Seaboard physically could reach and serve new port facilities at Dodge Island in Miami, Florida.

For thirty-four years, both Seaboard and East Coast have provided rail transportation to and from the present municipal port in Miami (J.S. 10a). When the new facilities now being constructed are completed, all activities will be transferred from the present port to Dodge Island (J.S. 11a). The Seaport Department of Metropolitan Dade County, owner and administrator of the port, contemplated that Seaboard and East Coast should each serve the new larger port with its own equipment (J.S. 11a). The plan was frustrated when East Coast, the only rail carrier with physical connections to the port, refused to permit Seaboard the use of its connecting facilities (J.S. 11a-12a). Seaboard then applied to the Commission under Section 3(5) of the Interstate Commerce Act, 49 U.S.C. 3(5), for permission to operate over 3,220 feet of East Coast's Miami trackage (J.S. 8a), so that it could serve the new port. Seaboard was supported in its application by the Greater Miami Traffic Association, acting on behalf of the port management. East Coast opposed the application.

After hearings, the Commission held (1) that it had jurisdiction over East Coast's tracks under Section 3(5) of the Act; (2) that joint use of the East

Coast tracks would be the most efficient method of serving the new port, and as such would be in the public interest; and (3) that Seaboard's proposed operations over those tracks would be practicable and would not substantially impair East Coast's ability to handle its own business (J.S. 10a; 16a-17a). The Commission ordered the parties to prepare an agreement concerning the terms and compensation for Seaboard's use of East Coast's tracks and retained jurisdiction to resolve any disputes that might arise (J.S. 17a-18a). As of this time, the terms and compensation have not been agreed upon, and the Commission has not been requested to determine them. The Commission in its opinion observed that construction of short connecting tracks to reach the East Coast's tracks would be required (J.S. 12a). But no authorization to construct such trackage had been sought, or was granted.

East Coast brought this district court proceeding to set aside the Commission's order on the ground that the Commission lacked jurisdiction over its trackage. East Coast contended alternatively that the Commission's order lacked finality, and was therefore not subject to judicial review, because (1) the Commission had retained jurisdiction to determine, if necessary, the terms and compensation for Seaboard's use of the East Coast tracks; and (2) the Commission had not yet granted Seaboard authority under Section 1(18) of the Interstate Commerce Act to construct a connecting link to East Coast's trackage.

The three-judge court unanimously affirmed the Commission's decision and order, holding that the

order was final and reviewable (J.S. 3a), that the Commission had jurisdiction over East Coast's trackage (J.S. 3a-4a), and that its findings were supported by substantial evidence (J.S. 5a-6a).

ARGUMENT

The sole issue tendered by appellant for decision by this Court is whether the Commission's order was final and hence judicially reviewable. We submit that it clearly was, and that the appeal does not present a substantial question. The test of finality of administrative orders for purposes of judicial review is whether the order imposes an obligation, denies a right, or fixes some legal relationship. *E.g.*, *Chicago & Southern Air Lines, Inc.* v. *Waterman Steamship Corp.*, 333 U.S. 103, 113. That test was met here. The Commission's order determined the entitlement of Seaboard to use East Coast's tracks. That other rights and obligations—the compensation that Seaboard would pay, and whether it should be authorized to build a short connecting track [1]—were left for future determination does not deprive the present order of finality. See, *e.g.*, *American Trucking Assns.* v. *United States*, 355 U.S. 141, 154. Moreover, if appellant believed that the Commission followed an improper procedure in failing to resolve these subsidiary questions at the same time that it determined the basic issue of Seaboard's right to use East Coast's tracks, it should have challenged the order on that

[1] It is not even clear that any such authorization would be required. See 49 U.S.C. 1(22).

ground—not brought a judicial review proceeding and then asked that the proceeding be dismissed because the order was not final. Such a procedure, seemingly designed solely for purposes of delay, should not be condoned.

CONCLUSION

The judgment of the district court should be affirmed.

Respectfully submitted.

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